

is listed or eligible for listing on the National Register of Historic Places, an area within an approved State Coastal Zone Management Program, a coastal barrier or a portion of a barrier within the Coastal Barrier Resources System, a river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System, a designated or proposed Wilderness Area, or a sole source aquifer recharge area designated by the Environmental Protection Agency (EPA). The resulting environmental review for those activities that lose their exclusion status shall focus on the factor or factors that caused the loss of the exclusion.

(a) *Minor renovations.* Projects for minor renovations within an existing facility, unless the renovation would impact a structure which is on the National Register of Historic Places, or is eligible for listing on the register.

(b) *Limited expansion.* Projects for the expansion of an existing facility or within an existing correctional complex, which does not add more than 50 beds or increase the capacity of the facility by more than 50 percent whichever is smaller. This exclusion does not apply to either a phased project that exceeds these numerical thresholds or projects to expand facilities that:

- (1) Are located in a floodplain;
- (2) Will affect a wetland;

(3) Will affect a facility on the National Register of Historic Places or that is eligible for listing on the register;

(4) Will affect a federally proposed or listed endangered or threatened species or its habitat;

(5) Is controversial for environmental reasons; or

(6) Would not be served by adequate sewage treatment, solid waste disposal, or water facilities.

(c) *Expansion of support facilities.* Projects for the expansion of bed space within an existing facility (e.g., double bunking or conversion of non-cell space) which are using grant funds to expand or add support facilities, such as a kitchen, medical facilities, recreational space, or program space, to accommodate the increased number of inmates. This does not include projects to increase capacity for support facilities

which might pose a threat to the environment, such as solid waste and waste water management, new roads, new or upgraded utilities coming into the facility, or prison industry programs that involve the use of chemicals and produce hazardous waste or water or air pollution.

(d) *Security upgrades.* Security upgrades of an existing facility which are inside the existing perimeter fence or involve the upgrade of the existing perimeter fence. This exclusion does not include such upgrades as adding lethal fences or increasing height or lighting of a perimeter fence in a residential area or other areas sensitive to the visual impacts resulting from height or lighting changes.

(e) *Privatization.* Projects that involve the leasing of bed space (which may include operational costs) from a facility operated by a private correctional corporation or that contract with a private correctional corporation for the operation of a state facility or program. This exclusion does not apply if the correctional agency has contracted with the private vendor to build the facility, operate the facility, or lease beds to the correctional agency using federal grant funds.

(f) *Drug testing and treatment.* Projects that use grant funds to implement drug treatment, testing, sanctions, or interdiction programs.

**§91.56 Actions that normally require the preparation of an environmental assessment.**

(a) *Renovation or expansion of existing correctional facility.* Renovation or expansion activities not categorically excluded under §91.55 require an environmental assessment (EA). An environmental assessment is generally prepared when a project is not expected to have a significant impact on the environment. Since projects for the renovation or expansion of an existing facility or the construction of a new facility within an existing correctional complex may have limited impact on the environment, preparing an EA may be sufficient.

(b) *Proposed construction of a new correctional facility.* The proposed construction of a new correctional facility

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will require the preparation of an environmental assessment unless the proposal will clearly have a significant environmental impact in which case an environmental impact statement can be initiated immediately without the preparation of an environmental assessment.

### **§91.57 Actions that normally require the preparation of an environmental impact statement.**

*Significant impact.* For the proposed construction of a new correctional facility or the proposed expansion of an existing facility, if the proposal is large or complex and/or controversial because of the nature of possible environmental impacts, and/or if any EA determines that the project will have a significant impact on the environment, an environmental impact statement (EIS) will be required. For those projects that clearly will have significant environmental impact, a grantee can save time and resources by initiating the EIS immediately without going through the EA process.

#### ENVIRONMENTAL REVIEW PROCEDURES

### **§91.58 Timing of the environmental review process.**

(a) *Initial planning and site selection phase.* The NEPA procedures must be initiated as part of the planning and site selection phase of all new construction, expansion, and renovation projects and completed before the construction or renovation on the project can begin.

(b) *Early consultation with OJP.* As grantees identify proposed, new projects, the grantees must inform OJP and after consulting OJP's *Program Guidance on Environmental Protection Requirements*, must recommend to OJP whether:

- (1) The proposed project meets the criteria of a categorical exclusion;
- (2) An environmental assessment should be initiated;
- (3) Because of the project size and/or anticipated environmental impacts, an environmental impact statement should be initiated.

(c) *Design phase.* Projects currently in the planning and design phase must complete the NEPA procedures and no further decisions or new commitments

of resources can be made on these projects by the State or local entity that would either have an adverse impact on the environment or limit the choice of reasonable alternative sites.

(d) *Prohibited pre-analysis activities.* None of the following actions can be taken until the NEPA analysis is completed for the affected project:

- (1) Starting construction;
- (2) Accepting construction bids;
- (3) Advertising for construction bids;
- (4) Initiating the development of or approving final plans and specifications; or
- (5) Purchasing property.

(e) *Ongoing or completed construction projects.* For grant-funded projects under construction, OJP will work with the States to determine what environmental analysis has been done, making every effort to limit disruption to projects under construction. For completed grant-funded projects, OJP will work with the States to determine whether those projects may pose continuing environmental problems. For example, NEPA issues may exist due to excessive noise, light pollution, excessive water consumption or draw down on an important stream, or adverse visual impact due to an inappropriate facade color in an environmentally scenic area. Consequently, performing an analysis for those VOI/TIS VOI/TIS projects for which construction is completed may still serve the useful purpose of determining the extent of a project's continuing adverse environmental impacts, and the feasibility of mitigation measures.

(f) *Avoiding duplication of efforts.* If an EA or EIS was completed on an original structure, any environmental research that was conducted at the time the original structure was being planned and is still relevant need not be duplicated in any required environmental impact analysis for proposed modifications or additions to that structure.

### **§91.59 OJP's responsibilities.**

(a) *In general.* All NEPA decisions such as determining the adequacy of assessments, the need for environmental impact statements, and their adequacy must, by statute, remain